

## REMARKS

Figs. 7-12 of the Drawings are objected to because of quality. Replacement sheets for such Drawings are provided herewith.

Claims 37-78 are pending in the application. Claims 38, 44, 47, 52, 57, 63, and 67 are objected to, but would be allowable if rewritten in independent form. New claims 79-81 have been added to rewrite claims 47, 57 and 67 in independent form.

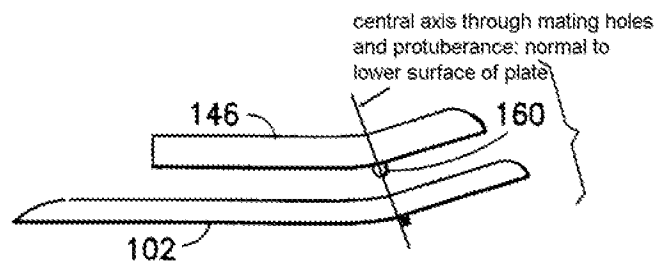
In addition to the amendments discussed below, claims 42, 53, 67 and 71 have been amended to correct typographical errors.

Claims 37, 39-43, 46, 48-51, 53, 58-62, 64, 70-72, 75, 77 and 78 are provisionally rejected for obviousness-type double-patenting over claim 9 of co-pending App. No. 10/985,598. Claims 37, 39, 40-41, 45-46, 48-51, 54-55, 59-62, 65-66, 68-69 and 75-78 are provisionally rejected for obviousness-type double-patenting over claims 11-13 of co-pending App. No. 10/985,597. A terminal disclaimer to obviate the rejections is provided herewith.

Claims 37, 39-41, 45-46, 48, 54-56, 58, 70, 73-75 and 78 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 6,358,250 to Orbay. The applicant respectfully traverses the rejection for the following reasons.

In order to support a rejection of a claim under 35 U.S.C. § 102(b), “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). As discussed below, Orbay fails to teach all the limitations of the claims.

Independent claims 37, 48, 59 and 65 all require the limitations of an “alignment hole having a second relatively smaller diameter [than the peg holes] sized to closely receive the K–wire in a predetermined fixed axial orientation which is oblique relative to a bone contacting surface of said plate.” In Orbay, the identified structures are mating elements such as holes 156, 158 on a plate for coupling with protuberances 160 on a guide. It is noted that such holes are stated to be “on the second side of the volar plate” and so it is reasoned that such “holes” do not pass all the way through the plate. Moreover, it is clear that if it is maintained that such holes do extend all the way through the plate, that clearly the holes and protuberances are configured such that the protuberances extend *normal* to the bone contacting surface of the plate.



The claimed invention requires that the one or more alignment holes are sized and oriented such that the axial orientation imparted to a K-wire received therethrough is *oblique* relative to the bone contacting surface. There is no teaching or suggestion for the claimed configuration. Furthermore, to emphasize the meaning of “predetermined axial orientation” in the claims, the term “fixed” has been added to indicate that the hole is structured to allow only such oblique axial alignment of K-wire relative to the bone contacting surface. Given the clearly different purpose of holes 156, 158, Orbay fails to speak at all to this issue, let alone provide a teaching or incentive or motivation therefor.

Claim 59 further requires first and second sets of peg holes respectively arranged along first and second lines that are longitudinally displaced, wherein peg holes of the first set laterally alternate with peg holes of the second set. Orbay also clearly fails to teach or suggest this limitation of the claim.

Claim 65 further requires a system including a plurality of K-wires, with the alignment holes plate sized to closely receive the K-wires. Orbay fails to provide any teaching or suggestion with respect to utilizing his plate with a plurality of K-wires.

Independent claim 70 requires that the head of the plate include parallel sets of peg holes and non-threaded alignment holes smaller in diameter than the peg holes. In Orbay, the holes 156, 158 are not in parallel arrangement with the peg holes 130, 132, 134, 136. Holes 156, 158 are shown extending in alignment substantially perpendicular

to the axis of the shaft. The peg holes 130-136 are specifically indicated to not be in parallel alignment relative thereto and not even in linear arrangement relative to each other. “The peg holes . . . are preferably *non-linearly arranged* along the head portion and are provided such that the *adjacent peg holes are provided further distally in a medial to lateral direction* along the second side.” (col. 3, lines 34-41) The described and shown (Fig. 2) arrangement is not perpendicular to the longitudinal axis of the plate. Thus, peg holes 130-136 and holes 156, 158 are not in parallel arrangement. Therefore, Orbay fails to teach or suggest the claimed invention.

Independent claim 75, as amended, requires a set of linearly arranged non-threaded alignment holes having a diameter sized to closely receive and retain individual K-wires in predetermined fixed axial orientations which are oblique relative to each other. Orbay provides no teaching or suggestion with respect to structuring the mating holes 156, 158 such that K-wires will be received and retained in *predetermined fixed axial orientations which are oblique relative to each*.

For the foregoing reasons, Orbay fails to anticipate or render obvious the claimed invention, and it is requested that each of the independent claims be indicated allowable. Likewise, all claims dependent on the independent claims are neither anticipated by nor obvious over Orbay for the same reasons advanced above.

In addition, the rejected dependent claims are also allowable on the merits of the limitations provided therein. By way of example only, claims 40 and 45 require that the

lower bone contacting surface of the head has a non-planar surface. Clearly Orbay teaches a lower planar surface (see Figs. 5 and 6). Claim 42 requires a plate in which the head portion is provided with longitudinally displaced first and second sets of linearly arranged peg holes. Orbay teaches only a single set of peg holes. Claim 49 requires two sets of peg holes each with a different type of K-wire alignment hole. Orbay does not address this. Claim 71 requires that the first and second sets define a common tangent line. This is not shown or suggested in Orbay. Claim 72 requires that the plate include a non-threaded alignment hole which is longitudinally displaced from another set of alignment holes. This is also not shown or suggested in Orbay.

It is submitted that the claims are in order for allowance, and prompt allowance is earnestly requested. Should any issues remain outstanding, the Examiner is invited to call the undersigned attorney of record so that the case may proceed expeditiously to allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David S. Jacobson', written in a cursive style.

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